

Montana Water Court  
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**FILED**  
07/05/2023  
Sara Calkins  
CLERK  
Montana Water Court  
STATE OF MONTANA  
By: D'Ann CIGLER  
39E-0507-R-2023  
Block, Nathaniel  
4.00

IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
BOX ELDER CREEK BASIN (39E)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANT: L & L Ranch Inc.

**CASE 39E-0507-R-2023**  
39E 21318-00

OBJECTOR: United States of America (Bureau of Land  
Management)

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## MASTER'S REPORT

The above-captioned claim appeared in the Preliminary Decree for Box Elder Creek (Basin 39E) and received an Objection from the United States Bureau of Land Management (BLM). The claim was consolidated into Water Court Case 39E-0507-R-2023 on February 17, 2023. On March 22, 2023, a status conference was held, L&L Ranch Inc. (L&L Ranch) failed to appear. On March 24, 2023 Minutes and an Order Setting Filing Deadline was issued, ordering the BLM to file a proposed abstract detailing modifications to the claim that would resolve their Objection and ordering L&L Ranch to file documentation showing good cause why they failed to appear at the status conference and detailing their position on the proposed abstract filed by the BLM. The Order stated that if nothing was filed by the deadline, this Master would conclude that L&L Ranch agreed with the modifications proposed by the BLM. On April 5, 2023, the BLM filed a proposed abstract and map detailing where the claimed acreage overlapped with federal land. Nothing was filed by L&L Ranch by the deadline.

## FINDINGS OF FACT

1. The proposed abstract filed by the BLM seeks to modify claim 39E 21318-00 as follows:

Maximum Acres:		<del>117.00</del>	111.00					
Place of Use:								
ID	Acres	Govt Lot	Qtr Sec	Sec	Twp	Rge	County	
1	1.00	1	NE	3	5S	58E	CARTER	
2	<del>79.00</del> 21.00	SESW	<del>S2S2</del>	34	4S	58E	CARTER	
3	54.00	S2SE		34	4S	58E	CARTER	
4	3	6.00	2	NE	3	5S	58E	CARTER
5	4	29.00	4	NW	3	5S	58E	CARTER
5	<del>2.00</del>		<del>S2NESE</del>	<del>34</del>	<del>4S</del>	<del>58E</del>	<del>CARTER</del>	
Total:	<del>117.00</del>	111.00						

2. Pursuant to the March 24, 2023 Order Setting Filing Deadline, L&L Ranch agrees with the modifications proposed by the BLM.

## **PRINCIPLES OF LAW**

1. The Montana Water Court has the authority to determine the extent of all water rights in the state as they existed prior to July 1, 1973. *Fellows v. Saylor*, 2016 MT 45, ¶ 25, 382 Mont. 298, 367 P.3d 732; §§ 85-2-233, -102(13), MCA.

2. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

## **CONCLUSION OF LAW**

1. The claim should be modified as discussed above. Modification of the claim resolves the Objection to the claim.

## **RECOMMENDATIONS**

1. Upon review the record in this case, the above-captioned claim should be modified as discussed above.

A Post Decree Abstract of Water Right Claim is attached to this Master's Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

**Service via USPS Mail:**

L & L Ranch Inc.  
930 Hammond Road  
Hammond, MT 59332-9717

**Service via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
BOXELDER CREEK  
BASIN 39E**

**Water Right Number:** 39E 21318-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** L & L RANCH INC  
930 HAMMOND RD  
HAMMOND, MT 59332 9717

**Priority Date:** SEPTEMBER 28, 1903

**Type of Historical Right:** FILED

**Purpose (use):** IRRIGATION

**Irrigation Type:** WATER SPREADING

**Flow Rate:** A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF DIRECT FLOW WATER SPREADING.

**Volume:** 180.00 AC-FT

**Climatic Area:** 2 - MODERATELY HIGH

**Maximum Acres:** 111.00

**Source Name:** MUSKRAT CREEK

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1	SE	34	4S	58E	CARTER

**Period of Diversion:** FEBRUARY 15 TO NOVEMBER 15

**Diversion Means:** DIKE

**Period of Use:** FEBRUARY 15 TO NOVEMBER 15

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00	1	NE	3	5S	58E	CARTER
2	21.00		SESW	34	4S	58E	CARTER
3	6.00	2	NE	3	5S	58E	CARTER
4	29.00	4	NW	3	5S	58E	CARTER
5	54.00		S2SE	34	4S	58E	CARTER

**Total:** 111.00